United Nations A/HRC/28/NGO/38

General Assembly

Distr.: General
19 February 2015

English only

Human Rights Council
Twenty-eighth session
Agenda item 4
Human rights situations that require the Council's attention

Written statement* submitted by the Jammu and Kashmir Council for Human Rights (JKCHR), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.15-02931 (E)

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Jammu and Kashmir - expedition, urgency and immediacy

Empowering the common man and woman through the exercise of a vote in the election of their representatives in a habitat is the basic component of an internal self-determination, which in some cases leads to external self-determination.

The State of Jammu and Kashmir and the regime of human rights of its people became a subject of a prolonged discussion at the UN Security Council through an application made by India under article 35 of the Charter on 01 January 1948. Pakistan filed her defence and counter claim on 15 January 1948. United States of America at the 607 meeting of the UN Security Council on 5 December 1952 stated that "we welcome any agreement which the parties themselves can reach on any basis which will settle the dispute, provided of course that basis is consistent with the principles of the Charter of the United Nations".

Pakistan urged the United Nations in January 1948 that a Plebiscite in Kashmir has to be organized by the Spring that is in three months' time in March 1948. Indian Government pleaded for expedition, urgency and immediacy at the UN Security Council in the resolution of Kashmir dispute in January 1948. Indian Government also pleaded for 'the sovereign powers exercisable in the State by the Jammu and Kashmir Government and by the Government of India within their respective constitutional spheres'. Mr. P Graham the United Nations representative for India and Pakistan in his report to the UN Security Council on 10 October 1952 stated, "May the prompt, fair and peaceful settlement of the Kashmir dispute by the Governments of India and Pakistan set the example, provide the leadership and point the way from fear and conflict to peace and hope for the peoples of the earth".

Mr. Graham added, "The values of an early settlement of this dispute would in my view, be tremendous for the 4 million people of the State, the 400 million people of the two nations involved and the people of the world".

United Nations Security Council at its 285th meeting on 19 April 1948 identified the composition and character of the Jammu and Kashmir Government. Security Council required that "The Government of the State shall forthwith be reconstituted so as to give equal representation to each major political group in the State, viz. the National Conference, the Muslim Conference and the Azad Kashmir – which will each be invited to designate an equal number of responsible representatives to constitute a Council of Ministers. This Council of Ministers may choose one of its members to act as President, but in the allocation of the portfolios it will be guided by the advice of the Commission".

It is 67 years (1948-2015) since this requirement was put down by the Security Council. Government of India has failed to assist the people under its administration to set up a UN identified Government, allow a sovereignty of powers to the State Government and respect the sovereignty of the vote of the common people. The question of the sovereignty of the people, today has to take on board a further distribution of people under three administrations on either side of cease fire line and a vocal Kashmiri diaspora spread all over the world.

Governments of India and Pakistan have undertaken obligations under the two resolutions of 13 August 1948 and of 5 January 1949 to carry out the provisions of a plebiscite under the auspices of the United Nations. Government of India does not have a credible record in regard to the discharge of its obligations under the UN Security Council resolutions, in regard to her bilateral agreement with the people of Kashmir and the Government of Pakistan on Kashmir.

India expressed its concern at the 284th meeting of the Security Council on the references in paragraphs 2, 5 and 9 of the draft resolution, where the representative of the United Kingdom Mr. Noel Baker had referred to Indian army in Jammu and Kashmir as 'occupation forces'. According to a bilateral arrangement Indian army had entered into the State to defend the territory, protect life, property and honour of the people. The UN resolution of 21 April 1948 sets out the number, behaviour and location of these forces.

Indian Government has reneged on its bilateral and international obligations. The State is splintered into three territorial spreads with effective and duly elected Governments. All the three are inhabited by the residents of Jammu and Kashmir and there is no risk of any one attacking the other. The people living in these three administrations accept the

final resolution of the State according to the principle of sovereignty of the people accepted at the United Nations. They are looking forward to co-operate with the UN administrator to translate the UN mechanism into action. Therefore, Indian army has nothing to defend any more.

From 1990-2015 over 100,000 civilians have been killed in the Valley and Indian army has failed to protect the life. People have suffered gross and systematic abuse of rights never witnessed in 144 years from 1846-1990 in the last 25 years. Rape, disappearances, custodial killings have been reported to the UN forums and use of live ammunition against civil population in recent years is disturbing. Indian army has failed to play the roles identified at the time of admission into the State and in UN SC Resolution of 21 April 1948. The number has increased. 500,000-700,000 regulars and a br ad spread of invisible surveillance network to occupy the habitat against the will of the people.

Out of the three administrations, namely Azad Kashmir, Gilgit-Baltistan and Jammu and Kashmir. Jammu and Kashmir on the Indian side remains without an elected Government since 23 December 2014 (as on 16 February 2015). Government of India has frustrated the formation of a Government of Kashmir based political parties and the BJP Government in Delhi is trying to seek a foothold in the State. It has used all means to create fissures in Kashmir politics and has been attempting an alliance with one of the like-minded political parties (Peoples Democratic Party) in Kashmir.

In the interim it has used article 92 of the Jammu and Kashmir Constitution to install the Governors rule in the State. Governor is an agent of the Government of India in the State and the BJP Government has used this loophole to remain incharge of governance in the disputed State. It is important to point out that Jammu and Kashmir Constitution adopted on 17 November 1956 continues to remain under the caution of UN Security Council Resolution of 30 March 1951.

BJP and its sister organizations like, RSS, Hindu Mahasabha and Shiv Sena are known to have worked for a 'Hindu India' and are challenging its secular credentials. The Hindu Mahasabha is recorded in the UN debates on Kashmir to have called to "Treat all Muslims as fifth columnists". As part of its communal agenda and to disturb the demography in the disputed Jammu and Kashmir the present BJP Government in India wishes to settle Hindu refugees of 1947 from West Pakistan in the State, which is against the State Subject Law of 20 April 1927. The State does not allow property or settlement rights to any non-Kashmiri, be it an Indian or a Pakistani. Government of Pakistan has not disturbed this law in the two administrations under its control, namely Azad Kashmir and Gilgit-Baltistan. Any violation of the law could be challenged in a court of law.

It is important that the UN revisits as early as possible the French proposal of 24 January 1948 that all foreign troops must be removed from Kashmir, all its original inhabitants, both Muslim and Hindu must be allowed to return to their places of residence and a free administration must be set up in Kashmir which will not exercise any pressure on the population and will ensure the fairness of the plebiscite.

We propose that:

1. The Government of the State should be reconstituted forthwith so as to give equal representation to each major political group in the State as identified in 285th meeting of Security Council on 19 April 1948

2. Azad Kashmir Government which has been set up to provide for the "better Government and administration of Azad Jammu and Kashmir until such time as the Status of Jammu and Kashmir is determined..through the democratic method of free and fair plebiscite under the auspices of the United Nations as envisaged in the UNCIP Resolutions", should be encouraged as Palestinians are encouraged in GA Resolution 3280 (XXIX) to play a lead role

3. UN to consider that the question of accession was for a temporary period and for a limited purpose. That period has elapsed and that purpose has been served, it ceases to be valid any more. Out sourcing of UN mechanism to Jammu and Kashmir Government and Government of India should be revisited, on the basis of expedition, urgency and immediacy pleaded by India.